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E. Pyle

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Steven E. Robbins

Art Unit: 3728

Serial No.: 08/873,876

Examiner: Patterson

Filed : June 12, 1997

Title : RESILIENT SOLE FOR USE IN ARTICLES OF  
FOOTWEAR TO ENHANCE BALANCE AND STABILITY

Assistant Commissioner for Patents  
Washington, DC 20231

RESPONSE TO ACTION DATED JUNE 3, 1998

Claim Rejections - 35 USC § 102

The Examiner has rejected claims 1-3, 7-11 and 15-18 under 35 USC §102(b) as being anticipated by Marc. The Examiner states that "Marc shows a sole (13) made from PVC foam (col. 3, lines 41-46) which inherently has a resiliency index as claimed." The Examiner is suggesting that all PVC foams have approximately the same resiliency index and that, since Marc has already disclosed a PVC foam for use in a shoe sole, Marc has inherently disclosed a shoe sole having a resiliency index falling within the ranges the applicant is claiming.

The Examiner has also rejected claims 1, 2, 7-10, and 15-18 under 35 USC §102(e) as being anticipated by Pyle. The Examiner states that "Pyle shows a sole (14) made from vinyl nitrile (column 3 lines 46-54) which inherently has a resiliency index as claimed."

The basis for this rejection appears to be found in the Declaration Under 37 CFR 1.132 ("the Rule 132 Declaration) filed